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RECEIVED

MAR 25 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 25, 2004

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445-12th Street, SW
Washington, DC 20554

Re: Notice of Oral Ex Parte Presentation
of the Rural Independent Competitive Alliance in
WC Docket No. 02-361

Dear Ms. Dortch:

Pursuant to Section 1.206(b)(2) of the Commission's Rules, attached please find the original and one copy of the memorandum summarizing new data or arguments made during the March 23, 2004 meeting that Rick Vergin, board member of the Rural Independent Competitive Alliance (RICA) and CEO of CTC Telcom (a Wisconsin rural CLEC), David Cosson and I, representing RICA, had with Scott Bergmann of Commissioner Adelstein's office.

The original notice also was posted to the Commission's ECFS on March 24 pursuant to Section 1.49(f) of the Commission's Rules. Copies of the memorandum already were provided on March 24, via email, to Mr. Bergmann.

Sincerely yours,

Clifford Rohde
Counsel to RICA

Attachment

cc: Chief, Competition Policy Division
Chief, Pricing Policy Division
Qualex

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March 24, 2004

Ms. Marlene H Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445-12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation
of the Rural Independent Competitive Alliance in
CC Docket Nos. 96-262, 96-45, 01-92, 01-338; WC
Docket Nos. 02-361, 04-36

Dear Ms. Dortch:

On March 23, 2004, Rick Vergin, board member of the Rural Independent Competitive Alliance (RICA) and CEO of CTC Telcom (a Wisconsin rural CLEC), Clifford Rohde and I met with Scott Bergmann in Commissioner Adelstein's office to discuss RICA's petition for reconsideration of the Commission's CLEC Access Charge Reform Order in CC Docket No. 96-262, and related matters.

Reform of CLEC Access Charges (CC Docket Nos. 96-262, 01-92)

The views we expressed reflect those RICA has already entered into the record. We did also, however, urge the Commission to address the petition for reconsideration independently from the subsequent petition of US LEC for a Declaratory Ruling Regarding LEC Access Charges for the Delivery of CMRS Traffic. RICA takes no position on US LEC's petition. Rather, we stressed that intermingling of the two issues should not delay adoption of the prospective Order on Reconsideration. We emphasized the importance to the rural CLEC industry of resolving the issues raised in RICA's petition for reconsideration. Proper resolution of RICA's petition will help provide some certainty, even if only on an interim basis, on the access charge regime to which rural CLECs are subject. We also provided Mr. Bergmann a copy of the attached document, previously entered into the record.

Universal Service Support (CC Docket No. 96-45)

We reiterated RICA's position that the amount of high cost Universal Service Fund support that carriers receive should be based on the costs of the carrier receiving support, not on the costs of the incumbent carrier receiving support. Acknowledging that the Federal-State Joint Board on Universal Service seeks additional input on the basis of support issue, we reported that members of RICA have had discussions with members of other small carrier organizations, with an eye towards proposing to the Commission a fair support-basis methodology to be used until such time that the Commission modifies the basis-of-support rules.

Unbundled Network Element (UNE) Policy Issues (CC Docket No. 01-338)

We reported that as a presumably unintended result of the Triennial Review Order (TRO), some RICA members are unfairly and inappropriately being required by some state commissions —either by the state commission directly or via aggressive state commission-endorsed discovery requests launched by the Bells and large UNE-P-based service providers— to divulge proprietary business and marketing information while these state commissions conduct the market-sensitive analyses required by the TRO. Even though the U.S. Court of Appeals for the District of Columbia has determined the Commission's TRO to be unlawful in relevant part, some states nevertheless are proceeding with investigations. Those state commissions continuing assume that the Commission ultimately will seek state commission input in any eventual unbundled network element policy developed by the Commission, either once all judicial avenues to defend or attack the TRO have been pursued, or on an interim basis while judicial battles continue.

RICA members are principally facilities-based carriers. UNE-P does not form part of most RICA members' business plans.[1] RICA believes that CLECs not utilizing UNE-P should not be required to divulge any but the most basic information —i.e., if the CLEC is not making use of UNE-P, no further information should be required to be divulged— during state commission reviews. Should the Commission craft interim UNE rules or final UNE rules after the judicial process has expired, these should forbid state commissions or their proxies from gathering proprietary business and marketing information from rural CLECs that make no use of UNE-P or unbundled switching.

IP-Enabled Services (WC Docket Nos. 02-361, 04-36)

We indicated that like telephone services should be treated similarly under the Commission's rules. For example, voice over IP services that substitute POTS, in effect or aim, should receive substantially the same regulatory treatment as plain PSTN services, including by being subject to access

[1] When RICA members do make use of UNE-P, it is primarily intended as a short-term measure until facilities can be built out. On behalf of its members who use UNE-P, RICA strongly supports Commission rules that promote continued availability of UNE-P

charges and universal service contribution obligations. Under that reasoning, and consistent with the Commission's rules, the Commission should deny AT&T's petition to be exempt from access charges for calls that originate and terminate on the PSTN simply because it uses IP technology in the middle of the call.

This *ex parte* notice is being filed electronically pursuant to Commission rules 1.1206(b) and 1.49(f).

Please contact the undersigned with any questions related to this submission.

Respectfully submitted,

/s/
David Cosson
Clifford C. Rohde
Counsel to RICA

Enclosure

cc: Scott Bergmann (via email)

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Rural Independent Competitive Alliance

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RECONSIDERATION OF THE COMMISSION'S CLEC ACCESS CHARGE REFORM ORDER (FCC 01-146) AND RELATED MATTERS

1. THE COMMISSION MUST ADDRESS THE ISSUES RAISED BY THE 2002 D.C. CIRCUIT DECISION VACATING THE COMMISSION'S DECLARATORY RULING RELATING TO CLEC ACCESS BEFORE JUNE 20, 2001

The U.S. Court of Appeals for the District of Columbia Circuit vacated the Commission's Declaratory Ruling (FCC 01-313) on June 14, 2002, because it believed the Commission had ordered interconnection and establishment of through routes without following the procedures of 201(a) of the Communications Act.

Because the *CLEC Access Charge Reform Order* is based on the same Section 201(a) analysis — the requirement to provide service on reasonable demand— the Commission on reconsideration must address the Court's concerns and provide a sustainable decision.

In vacating the *Declaratory Ruling*, the Court acknowledged but refused to consider as a post hoc rationale the fact, reflected in the record before the Commission, that interconnection already existed and traffic was being exchanged, so there was no need to follow the interconnection procedures.

- The Commission could determine that a sufficient hearing has been conducted, and enter the findings and order required by the second clause of Section 201(a).
- The Commission should address and resolve each of the additional reasons put forth on the record as to why the conduct of AT&T and Sprint in refusing, directly or constructively, to serve CLEC customers and to pay CLECs their lawful tariffed rates, violates the Communications Act. Specifically:
    - Such conduct is an unreasonable practice in violation of Section 201(b);
    - Such conduct is unreasonably discriminatory and prejudicial, in violation of Section 202(a);
    - Refusal to serve violated (until July 31, 2001) the carriers' tariffs contrary to Section 203(c);
    - Discontinuance of service to CLEC customers without Commission certification violates Section 214(a);
    - Refusal to interconnect violates Section 251(a); and
    - Refusal to serve CLEC customers violates Section 254(g).

- If AT&T and Sprint are allowed to resume refusing to serve CLEC customers and

refusing to pay CLECs' lawful rates, rural CLECs will experience a financial crisis comparable to that which has decimated the urban CLEC industry.

2. THE COMMISSION SHOULD RULE FAVORABLY ON RICA'S OTHER RECONSIDERATION REQUESTS. THE COMMISSION SHOULD:

- Allow rural CLECs to recover a reasonable proportion of their costs from the Interstate jurisdiction, comparable to that of rural ILECs, otherwise competition will not expand in rural areas and may not be able to continue.
- Revise eligibility for the rural benchmark to include those rural CLECs that compete with "price cap carriers."
- Revise the eligibility criteria for the rural benchmark so that a CLEC that extends its lines into a disqualifying non-rural area loses eligibility for the rural benchmark only "to the extent" that it serves subscribers in non-rural areas.
- Permit eligible rural CLECs to continue using the rural benchmark when entering a new MSA.

3. MAG AND THE RURAL TASK FORCE

The rural benchmark ties rural CLEC rates to NECA rates, but the MAG Order (FCC 01-304) substantially reduced the NECA rate by shifting carrier common line recovery to a universal service mechanism (ICLS) not available to rural CLECs. As a result, rural CLECs' recovery of costs of providing interstate access is inadequate. To mitigate this inadequacy, the Commission should both expand the rural benchmark as described above and revise the Universal Service rules to provide for support based on a rural CLEC's own costs.

4. UNIFIED INTERCARRIER COMPENSATION

RICA urges the Commission not to adopt a "bill and keep" plan. RICA recommends that, should the Commission proceed with developing a "bill and keep" replacement for access, it must determine how access revenues can be replaced for rural CLECs in a manner that does not cause their local rates to violate the principles of affordability and comparability with urban rates.

5. DESIGNATION OF RURAL CLECs AS INCUMBENTS

Several rural CLECs have substantially replaced the incumbents in their service area, and are prepared to assume the obligations of incumbents. The Commission should established prompt, straightforward proceedings to process Section 251(h)(2) petitions efficiently.